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# *THE INTERIM*

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HELENA, MONTANA

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## LEGISLATOR PER DIEM PAYMENTS -- TAX CONSIDERATIONS

*This information is intended to assist legislators and their tax preparers in handling legislative per diem payments. Legislators should consult with their income tax preparers for specific requirements relating to individual circumstances.*

### GENERAL RULES

All legislator per diem payments made to legislators living more than 50 miles from the Capitol building are reimbursements made under an accountable plan, are not taxable income of the legislator, and are not subject to withholding or reporting. The difference between the per diem paid and the amount allowed by federal law for reimbursement is treated as unreimbursed expenses and, subject to certain limitations, is allowed as a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who do not live in Helena but who live within 50 miles of the Capitol building are not substantiated reimbursements and are thus reported as income. Withholding is made against these payments. All legislative lodging and meal expenses actually incurred by the legislator are unreimbursed expenses and, subject to certain limitations, may be a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who reside in Helena are reported as income and are subject to withholding. The legislator may not claim meal and lodging expenses incurred in Helena.

### ACCOUNTABLE PLAN

All legislator per diem payments made to a legislator whose home is more than 50 miles from the Capitol building are employee reimbursements under an accountable plan for the following reasons:

1. IRC section 162(h) eliminates requirements for a legislator to substantiate

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an overnight stay.

2. The per diem payment to legislators is \$75 per legislative day, set according to 5-2-301(4), MCA. Federal law provides one type of accountable plan for when the employee's "lodging plus meals and incidental expenses" per diem reimbursement is less than the amount computed for the federal per diem rate. (IRC section 62(a)(1)(A), 26 CFR 1.62-2) For Montana, the applicable reimbursement rate, set forth in 41 CFR Ch. 301 App. A, is \$80--\$50 for lodging and \$30 for meals and incidental expenses.

Reimbursements paid "under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA)...". (26 CFR 1.62-2(c)(4))

Therefore, all legislators living more than 50 miles from the Capitol building do not have their per diem payments reported on their W-2 Forms.

Under 26 USC 162(h)(4), the special provisions allowing use of the federal per diem rate do not apply to legislators living within 50 miles of the Capitol building. Therefore, those legislators must follow the provisions of 26 USC 274(d), must specifically substantiate all lodging and meal expenses, and cannot take advantage of unreimbursed expenses set forth below. Because 26 USC 274(d) requires out-of-town travel before a person can claim lodging and meal expenses, a legislator who lives in Helena cannot claim any meal or travel expenses for session activities occurring within Helena.

### **UNREIMBURSED EXPENSES**

All legislators who live more than 50 miles from the Capitol building are considered to have substantiated expenses equal to \$80 a day, but they receive only \$75 in per diem payments. Under 26 CFR 1.62-1T(e)(4), the legislator is allowed as a deduction a portion of this unreimbursed expense. The amount of the deduction is determined as follows:

1. The \$5 difference must be allocated between lodging and meals in the same ratio as is set forth in the schedule in 41 CFR Ch. 301 App. A, after subtracting \$6 (the amount allocated to incidental expenses) from the meals and incidental expenses amount. The ratio of \$50/\$24 is 68%/32%. Thus, of the \$5, \$3.40 is allocated to unreimbursed lodging expenses and \$1.60 to unreimbursed meal expenses.
2. All of the \$3.40 lodging expense and 50% of the \$1.60 meal expense (see 26 USC 274(n)) are deductible, subject to the 2% floor on miscellaneous itemized deductions of 26 USC 67.

A qualifying legislator may receive per diem allowable travel reimbursement for

each legislative day, as defined in 26 USC 167(h)(2). A legislative day is each day that the Legislature was in session, including days during breaks if Legislature was not in session for a period of 4 consecutive days or less. A legislator can claim any day as a legislative day even if the Legislature was not in session but the physical presence of the legislator was formally recorded at a meeting of a committee of the Legislature. During 1999, the Legislature was in session for 108 days that met the federal definition of a "legislative day" and per diem was paid for 106 of those days. The 2 days for which per diem was not paid may be claimed for \$80 per day unreimbursed business expenses and may be deducted as provided above, except that the base amounts are the daily allowable total of \$50 for lodging, \$24 for meals, and \$6 for incidental expenses.

Per diem is paid for committee members' attendance at committee meetings held during the interim. Days in Helena on legislative business for which no per diem was paid are unreimbursed business travel expense days and may be deducted as described above.

## PUBLIC INFORMATION SUBCOMMITTEE

"You are about to enter..."...The Public Information Subcommittee of the Legislative Council has adopted a work plan for carrying out the feasibility study of broadcasting the Legislature and other state government activities. The plan includes a schedule of meetings over the remainder of the interim, arranged in a sequence to address general topics, including the structure and organization of a state public affairs broadcasting entity; governance of programming, scheduling, and infrastructure elements; program content and style of delivery to statewide audiences; technological choices for production, transmission, and distribution of television and various types of broadcast signals; and, last but not least, funding requirements and possible sources of financial support.

The Subcommittee presented a progress report and a preliminary assessment of the rationale for broadcasting state government activities at the Legislative Council's meeting on January, 27-28.

The schedule and work plan are available on the Internet at the Legislative Council's home page at <http://leg.state.mt.us/Services/LegCouncil.htm>. Paper or electronic copies of these same documents, as well as forthcoming reports, are also available on request from Research Analyst Stephen Maly by calling 444-4064 or by e-mail to <[smaly@state.mt.us](mailto:smaly@state.mt.us)>.

## TRANSITION ADVISORY COMMITTEE

TAC To Meet in Helena...The Electric Utility Restructuring Transition Advisory Committee (TAC) will meet in Helena on Thursday, February 17, in the Director's Conference Room at the Department of Environmental Quality, located at 1520 E.

Sixth Avenue. *(Please note that this is a change from a previously announced meeting on Friday, Feb. 18, in Missoula.)* The meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. The morning agenda includes the following items:

- ▶ explanation of Montana Power Company's closure on the sale of its generation assets to PP&L Global, including the ramifications for MPC's Transition Plan filing with the Public Service Commission and the projected effects on transition costs, tax payments, and retail electricity prices;
- ▶ overview of Legislative Council on Columbia River Governance, a regional group of legislators involved in discussions on a broad array of issues concerning the uses, costs, and control of the Columbia system; and
- ▶ discussion of default supply issues, including the Bonneville Power Administration's Record of Decision re: Standards of Service, the schedule and substance of the Public Service Commission's rule making, and the implications of these and other contingencies for the Montana Electricity Buying Cooperative and other prospective default suppliers

In the afternoon, the TAC will consider the following:

- ▶ taxation issues: e.g., legislation may be required to ensure an equitable solution to the situation facing Flathead Electric Cooperative, its affiliate Energy Northwest, Inc., and the affected jurisdictions in the Flathead area; and
- ▶ a roundtable discussion on market power and barriers to entry into the residential/small commercial market for retail electricity sales in Montana. TAC members and other interested persons will assess the status of competition at this stage in the multi-year transition process. Public comment will be invited on actions, if any, that would enhance the transition to effective competition in the post-transition environment.

Members and staff will provide updates on the Department of Revenue's rules on Universal System Benefits Program credits, National Center for Appropriate Technology's solar energy program for schools, MPC's pilot and customer education programs, and TAC's web site.

The Budget Subcommittee will supply a brief report and recommendations regarding the TAC's funding prospects, expenditures, and contributions.

For further information, contact Stephen Maly at 444-3064, or send an e-mail to <[smaly@state.mt.us](mailto:smaly@state.mt.us)>.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES

Meeting in February...The next meeting of the Children, Families, Health, and Human Services Committee (CFHHSC) is February 25. The main topics for the

meeting include a report from the Montana Dental Access Coalition's working groups, a report from the CFHHSC members serving on the Governor's Advisory Council on Tobacco Use Prevention, and more on foster care issues. Standing reports will include the HJ 35 Mental Health Subcommittee, Project Challenge, FAIM and TANF issues, and administrative rule issues.

All Committee minutes, reports, and agendas and a link to Montana Dental Summit Information have been posted to the new interim committee website at: [http://leg.state.mt.us/interim\\_committees/](http://leg.state.mt.us/interim_committees/). Please visit the website and let us know what you think!

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <[sfox@state.mt.us](mailto:sfox@state.mt.us)>, or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## DISTRICTING AND APPORTIONMENT COMMISSION

To Issue Proclamation...The Districting and Apportionment Commission will soon be issuing a proclamation encouraging all Montanans to support the United States Census Bureau and to fully participate in Census 2000. Recent national news reports have raised concerns whether Montana will have sufficient population to regain our second congressional seat. It is vital that all Montanans participate in the census enumeration, so please do your part to fill out and return your census forms and to encourage others to do so. Your information remains strictly confidential and no other agency is allowed to use personally identifiable information for any purpose.

Commission Looking at Technology...The Commission staff is gathering information on redistricting technology for software, training, and support. Staff will also be presenting a request to the Legislative Council for the development of options to more fully participate in the future in the U.S. Census Bureau Redistricting Data Program.

If you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <[sfox@state.mt.us](mailto:sfox@state.mt.us)>, or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## ENVIRONMENTAL QUALITY COUNCIL

EQC Meets in Missoula...The Environmental Quality Council (EQC) met on January 21 in Missoula. The Council heard informational reports on bull trout recovery in Montana, Columbia Basin issues, and electric industry restructuring. The

Council's subcommittees also met, and their reports are found later in this article. The Council will hold its next meeting at MSU-Billings in Billings on March 24.

To view the Council's or any Subcommittee's minutes from previous meetings or Council and subcommittee work plans, agendas, and press releases, please visit the EQC web site at <http://leg.state.mt.us/Services/lepo/index.htm>. If you have any questions or would like additional information or to be placed on the EQC interested persons mailing list, contact Todd Everts by phone at 444-3747 or by e-mail at <teverts@state.mt.us>.

Montana Environmental Policy Act (MEPA ) Study...The MEPA Subcommittee met January 20 on the UM campus in Missoula and received information on the following topics: a review of SJR 18 (MEPA study) tasks accomplished and those that remain, updates on the MEPA public participation surveys by the Consensus Council and on litigation involving the MEPA, agency policies for assessing MEPA fees for projects that require an EIS, project circumstances and statutory time frames that affect MEPA timeliness, criteria that could help define the costs and benefits of conducting environmental analyses under MEPA, and suggestions regarding EQC's role in MEPA.

The MEPA Subcommittee will next meet in Helena on Friday, February 18 in the DEQ Director's Conference Room in the Metcalf Building on 6th and Sanders. This will be a working meeting for the MEPA Subcommittee and is not a regularly scheduled full EQC meeting. The Subcommittee will be reviewing the first draft chapters of its study report and the public is invited to attend. The MEPA Subcommittee will meet again Thursday, March 23 in conjunction with the next regularly scheduled EQC meeting on March 24. These meetings will be held in Billings at MSU-Billings.

For more information, contact Todd Everts at 444-3747 or by e-mail at <teverts@state.mt.us> or Larry Mitchell at 444-1352 or by e-mail at <lamitchell@state.mt.us>

Eminent Domain Issues...Possession of property by the plaintiff, study expectations, design and content of the eminent domain handbook, and a draft first chapter of the final report were just a few of the issues discussed at the January 20th meeting in Missoula of the Eminent Domain Subcommittee.

The Subcommittee heard comments from the public regarding their concerns on the current eminent domain laws. The public also commented on concerns related to liability associated with projects that are installed through the use of eminent domain.

The next Eminent Domain Subcommittee will be held on Thursday, February 24 at the Director's Conference Room, Department of Environmental Quality, Helena, Montana. The meeting will be held from 9 a.m. to 5 p.m. This will be a work meeting for the Subcommittee. Members will be discussing preliminary findings and conclusions on the specific topics discussed to date.

As time allows the Subcommittee will address issues such as:

- ▶ due process that is allowed in eminent domain statute;



- ▶ who carries the burden of proof;
- ▶ how rights of reentry are defined;
- ▶ what are the authorized public uses in other states;
- ▶ liability associated with condemned property;
- ▶ use of the interest taken;
- ▶ the types of interest taken; and
- ▶ the state's level of concurrence with Federal condemnation actions.

The Subcommittee will hear staff presentations on what the current law states on each of these topics and use this information to determine if the current statutes are adequate.

If you have questions or would like additional information, please contact Krista Lee at 444-3957 or by e-mail at <klee@state.mt.us> or Gordy Higgins at 444-9280 or by e-mail at <gohiggins@state.mt.us>.

Water Policy...The EQC's Water Policy Subcommittee met in Missoula on January 20. The Subcommittee heard presentations about the recent Montana Supreme Court decision in *Confederated Salish and Kootenai Tribes v. Clinch*, regulation of concentrated animal feeding operations, and regulation of hog farms in other states. The Subcommittee was also presented with responses to an EQC inquiry of state agencies regarding environmental trend data. The members will identify further questions regarding water quality data.

The Water Policy Subcommittee will meet again on May 4 in Helena. For more information, contact Mary Vandenbosch by phone at 444-5367 or by e-mail at <mvandenbosch@state.mt.us>.

Land Use/Environmental Trends...The EQC's Land Use/Environmental Trends Subcommittee met in Missoula on January 21. Representatives from Ravalli, Missoula, and Lake Counties and the City of Missoula discussed local efforts to develop and implement growth policies as well as related land use issues. The Subcommittee discussed the responses received from state agencies in response to an EQC request that the agencies provide a list of environmental indicator or condition data that are routinely gathered. The Subcommittee decided to:

- ▶ recommend that the EQC support a potential Montana Department of Commerce effort to provide funding for development and implementation of growth policies (comprehensive plans);
- ▶ continue to pursue a dialogue with various organizations about the need for funding for growth policies;
- ▶ follow-up on the Subcommittee's request to meet with the Montana Smart Growth Coalition to discuss the Coalition's goals and objectives, as well as the American Planning Association study;
- ▶ follow up on the EQC's request for environmental trend information by focusing on water quality trends. The Subcommittee will cooperate with the Water Policy Subcommittee in identifying specific questions; and
- ▶ invite members of county teams that have participated in the

NACo/Sonoran Institute Western Community Stewardship Forum to make a presentation to the Subcommittee. Counties eligible to participate in the program will be invited to the meeting.

The Subcommittee also identified additional information needs with respect to development and implementation of growth policies (comprehensive plans) as well as local strategies to address residential development in riparian areas.

The Land Use/Environmental Trends Subcommittee will meet again in Billings on March 23. For more information, please contact Mary Vandenbosch by phone at 444-5367 or by e-mail at <mvandenbosch@state.mt.us> . for more information.

## REVENUE AND TAXATION COMMITTEE

Subcommittee to Hold Two-Day Meetings...At the December 10 meeting of the Revenue and Taxation Committee, Rep. Chase Hibbard appointed a subcommittee to assess the Committee's responsibilities for program review of the Departments of Revenue and Transportation under Senate Bill No. 11. Subcommittee members include Rep. Dan Harrington, Chair, Rep. Hibbard, Sen. Vicki Cocchiarella, and Sen. Bill Glaser. On January 5, the subcommittee decided that the full Revenue and Taxation Committee should meet for 2 days for at least the next two meetings. The Committee will consider revenue and tax issues on the one day and transportation issues on the other. The expanded schedule is intended to provide more time for program review and to allow the public to comment on the activities of the Department of Revenue and the Department of Transportation.

Committee to Meet February 17 and 18...The Revenue and Taxation Committee will meet February 17 and 18 in Helena at the Federal Building (301 South Park) in Room B7. The Committee will convene at 10 a.m. on February 17 and at 8:30 a.m. on February 18. Tentative agenda items for Thursday include:

- ▶ implications of the recent Montana Supreme Court decision declaring unconstitutional the new coal producer's license tax under HB 260;
- ▶ discussion of revenue estimating procedures for the next biennium;
- ▶ update on the Department of Revenue's Process Oriented Integrated System;
- ▶ report on the sale of Montana Power Co. electrical generation property to PPL-Montana;
- ▶ review the implementation of House Bill No. 174 revising the taxation of electrical generation;
- ▶ analysis of the effect of Senate Bill No. 184 on taxpayers and local governments;
- ▶ Department of Revenue topics; and
- ▶ progress report on local government and court funding committees.

Tentative agenda items for Friday include:

- update of Committee work plan and program review functions;
- Department of Transportation review of planning process, performance programming, and public involvement;
- update of SJR 34 eminent domain study and Department of Transportation issues;
- speed limit issues on secondary roads;
- Community Transportation Enhancement Program process; and
- status of highway special revenue account.

For more information about the Revenue and Taxation Committee, contact Jeff Martin by calling (406) 444-3064 or by e-mail at <jmartin@state.mt.us>.

## MENTAL HEALTH MANAGED CARE COMMITTEE

Committee Holds Two-Day Meeting...The Mental Health Managed Care Committee met January 20 and 21. Dr. Ira Lourie, a child psychiatrist, reviewed the positive outcomes of the state's venture into the mental health managed care contract with Magellan Behavioral Health Services. Dr. Lourie encouraged the Department of Public Health and Human Services to retain the advances accomplished by the Mental Health Access Plan in public mental health services. Those are:

- development and advancement of an enhanced vision of mental health services in Montana;
- emergence of a single mental health authority responsible for delivering mental health services for children;
- greater system of accountability in requiring a review of available community services prior to placement in higher end care;
- improved access to case management to coordinate and organize services;
- greater degree of flexibility in funding appropriate mental health services;
- development of new community based services, particularly growth in school-based and rural services;
- required patient discharge planning; and
- improved access to services for seriously emotionally disturbed children by raising the income eligibility to 200 percent of the federal poverty limit (subsequently lowered to 150 percent).

Dr. Lourie also noted that coordination of public mental health services for children needs to be a unique solution for each locality. There is no "one size fits all" model that works in all communities. He said that child mental health service planning is an extremely complicated process because it can involve several agencies. A successful process needs structure and authority from the state level and the flexibility to create unique approaches at the local level which reflect the nature, resources, and sophistication of each community and region.

The Subcommittee also heard a presentation on funding and eligibility for and

access to state public mental health services. Funding sources that were specifically reviewed included Medicaid, the Mental Health Services Plan (MHSP), and the Children's Health Insurance Program (CHIP). The 1999 Legislature appropriated about \$98 million total funds (\$45 million general fund) specifically for mental health services, but not including CHIP since that appropriation funded both physical and mental health services. Eligibility for state-funded public mental health services depends on personal and family income for all funding sources as well as resources and assets for Medicaid funded services. MHSP and Medicaid also have nonfinancial criteria as part of eligibility, including disability and degree of disability. In general, childless able-bodied adults under 65 are not eligible to receive services from any of the funding sources.

Committee Holds Teleconference...In the afternoon of January 20, the Committee hosted a statewide televideo conference to receive comment on the development of appropriate community services. Issues identified in public testimony included:

- ▶ low reimbursement rates and under utilization of crisis services;
- ▶ lack of a single point of entry and coordination of children's services when more than one agency is involved;
- ▶ desire to have Medicaid bills sent to consumers for review of accuracy and services received;
- ▶ a worry about expanding services without additional funding;
- ▶ extended Medicaid coverage for persons with disabilities who are recovered enough to go back to work;
- ▶ need for a mental health court;
- ▶ lack of transitional mental health services for persons discharged from prison; and
- ▶ training for law enforcement officers in recognition of and working with mentally ill people.

Committee Hears Panel Discussion...The meeting on January 21 began with a panel discussion by mental health providers. Panelists noted several improvements in the state public mental health system, including significant improvements in communication and consistency in the program. The panel also identified several issues:

- ▶ high-end services, such as hospitals and residential care facilities for children, are full with waiting lists;
- ▶ difficulty in discharging persons when it is appropriate to do so;
- ▶ increasing lengths of stay for high-end services;
- ▶ some reimbursement rates are not adequate to cover the cost of services, especially due to increasing lengths of stay when rates are based on DRG's (diagnostically related group);
- ▶ some adults and children are entering high-end services without ever first receiving community based services that may have prevented hospitalization;

- ▶ fear of another major change in the mental health system, discouraging some providers from participating;
- ▶ lack of access to psychiatric care (generally seen as a statewide problem);
- ▶ lower census in some community based services such as therapeutic foster care;
- ▶ reduction of some community-based services such as family-based services;
- ▶ lack of consumer-run alternatives;
- ▶ lack of meaningful, daily activities for mentally ill adults; and
- ▶ lack of a clear vision of what mental health services ought to be in Montana.

Committee Hears About Pilot Project...Finally, the Committee heard a presentation on statutorily authorized types of placement review and foster care review committees that can be formed locally. The Committee also heard about a pilot project, the Helena Family and Youth Initiative, that includes representation from child protective services, juvenile corrections, and schools. The pilot project will operate for three years and help up to 10 families with multiagency service needs. The goal of the project will be to maintain in their homes high risk children with mental health needs who are involved with more than one agency. The project will directly involve families in helping to determine the kinds of services they believe they need. The pilot will be evaluated by a series of outcomes with specific measurements. The broad outcomes to be measured are: stable or improved behavioral functioning at home and in the community, ability to form and sustain consistent positive relationships with family and/or surrogate family, educational development, self sufficiency, legal involvement, and several competencies and achievements.

To Meet Again in March...The next Committee meeting will be held March 8 in Helena. The Committee will hear presentations on the Montana Advocacy Program survey of mentally ill persons held in jails, development of effective local health programs, and options to make Medicaid funding as flexible as possible. Contact Lois Steinbeck for further information at 444-5391.

## BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

Committee Hears from State Agencies...The Business, Labor, and Agriculture Committee met January 14, in Helena, to discuss a number of issues associated with statutory responsibilities of rule review and agency program monitoring. The Committee listened to a presentation by the Building Codes Division of the Department of Commerce concerning an adopted rule increasing electrical permit renewal fees. The Committee was polled to determine whether any consensus could be reached on the increase and has asked the Division to provide its plans for resolving any outstanding issues by the next scheduled meeting of the Committee.

The Department of Livestock provided a chronological outline of the recent identification and disposal of elk held on a Montana game farm. Livestock officials recounted the policies and procedures that were employed to address this issue and attempted to relay the latest scientific information on Chronic Wasting Disease identification, transmission, and disposal techniques. The Department was asked to keep the Committee apprized of any changes in its procedures.

Committee Continues Competition Study...A preliminary analysis of the HB 515 survey was presented to begin the process of narrowing the Committee's focus. Additional mailings have been sent to local government officials. Committee staff encourages anyone interested in receiving a survey to contact the Legislative Services Division for a copy.

Workers' Comp Subcommittee Meets...The Workers' Compensation Subcommittee met January 13, in Helena, to discuss the proposed study plan. The primary focus of the Subcommittee's work will be to:

- ▶ review the structure of the current workers' compensation system;
- ▶ examine major legislative changes to the system since 1987;
- ▶ compare and contrast reform efforts that revised benefits in Montana and other states;
- ▶ evaluate the historical performance of the system;
- ▶ quantify benefit levels for permanent total, permanent partial, and temporary total indemnity claims;
- ▶ consider methods to reduce the frequency of all injury claims; and
- ▶ quantify system benefits and costs associated with changes to the system.

Presentations by the Department of Labor and Industry and the National Council on Compensation Insurance provided the Subcommittee with information about how past changes in the law have impacted Workers' Compensation and where Montana stands in comparison to several regional states. The Subcommittee will continue to gather information on the specific items identified in the study plan. The next Workers' Compensation Subcommittee is tentatively scheduled for March 1, in Helena, at the Federal Building.

To Meet in March...The next Business, Labor, and Agriculture Committee meeting is scheduled for March 2 and 3, 2000, in Helena, at the Federal Building, Room B7. An agenda will be available in late February. If you have any questions about the Committee's activities, please contact Gordy Higgins at 444-3064 or by e-mail at <gohiggins@state.mt.us>.



## STATE ADMINISTRATION, PUBLIC EMPLOYEE RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS COMMITTEE

Committee Holds Fourth Meeting...The State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee (SAIC) conducted its fourth meeting of the interim on Friday, January 21 in Helena. The bulk of the meeting was devoted to the study of state contracting commissioned in SJR 9. As directed by language in SJR 9, the SAIC examined other states' law, policy, and process for procuring and contracting for goods and services. Assisting the SAIC in its investigation were Ms. Ellen Bickelman, Deputy Purchasing Agent for the Commonwealth of Massachusetts and Mr. Dugan Petty, State Purchasing Manager for the State of Oregon (and formerly the chief procurement officer for the State of Alaska).

State Contracting in Massachusetts and Oregon...During the morning session, the SAIC listened to descriptions of the organizational structure of the purchasing functions in Massachusetts and Oregon, as well as the law and rules under which vendors and the procurement agencies in those states operate. Massachusetts, like Montana, bases its procurement processes on a "model procurement code" advocated by the National Association of State Purchasing Officers (NASPO) and others beginning in the early 1980s. Oregon, in contrast, does not operate by using the model code but has, instead, developed its own legal framework (much of which reflects components of the model code).

The SAIC members engaged the two speakers in a dialog about balancing the sometimes exclusive goals of "lowest cost" and "local, small business health and prosperity". Ms. Bickelman and Mr. Petty both recognized the tension resulting from the equally important goals and said the same tension existed in their states. However, they believe that providing excellent service to their customers and providing good value are their states' guiding principles. They both indicated that free markets and competition would probably prevail in the long run, regardless of a state's efforts to effect a different result.

Ms. Bickelman and Mr. Petty noted that public procurement has become more complex and demanding over the past 20-30 years. They characterized the transition as systems that were originally designed for the purchase of "commodities", such things as paper, office furniture, and asphalt, to systems that now must also provide for the acquisition of "services", including services for private prisons, all types of physical and mental health, architecture and engineering, legal advice, environmental monitoring and enforcement, and information technology. Consequently, both Oregon and Massachusetts have designed and implemented specialized training and education for their respective procurement professionals (including purchasing agents, contract managers, contract attorneys, quality assurance personnel, and others) so that the state's purchases result in good value for the money expended.

Each of the two states is recognized by purchasing professionals as being a leader in certain aspects of procurement. In both Massachusetts and Oregon, the primary goal of state procurement officials is to provide outstanding service to their customers who are essentially state government agencies and, to a somewhat lesser degree, local governments, elementary and secondary schools, universities and colleges, and other public sector entities. Both Oregon and Massachusetts have engaged in partnering with other public sector purchasers to leverage their combined buying power for the range of goods and services procured by states and local governments.

Massachusetts is perhaps the leader among the 50 states in participating in intergovernmental cooperative agreements, including federal-to-state, state-to-state, state-to-local, and local-to-state reciprocity. Massachusetts is also a leader in transacting state business electronically, including such initiatives as:

- ▶ listing on the Commonwealth's Internet website all of the Commonwealth's procurement needs and activities. (Essentially, this includes listing every product or services for which the state is accepting bids or responses to state "requests for responses", applicable specifications, submission requirements, and the like.);
- ▶ designing and implementing automated systems that accept vendors' bids or responses. (The Commonwealth is increasingly using the Internet as the principal tool for these activities.);
- ▶ establishing systems for electronic encryption of proprietary information and for using electronic signatures; and
- ▶ establishing and participating in a prototype "E-Mall", where state and local government purchasing staff can go to shop among the myriad of goods and services that are part of "state term contracts" and to purchase the goods and services with, literally, the click of a computer mouse button.

The afternoon session of the meeting focused on public contract management and the resources necessary to ensure that the state's interests are fostered and protected. It was pointed out that it is a common misconception that public contracts with private providers are self-effecting, i.e., that once a contract is signed by the state and the private provider, the state can essentially walk away and have confidence that whatever service (or product) is to be provided by the vendor under the contract will, in fact, be provided. Instead, both Mr. Petty and Ms. Bickelman counseled the SAIC that project management and contract enforcement are essential if the state's interests are to be ensured.

To Meet in February...The SAIC will continue the SJR 9 study of state contracting at its next meeting, scheduled for February 28 and 29, in Helena. The SAIC subcommittees on disability and health care and on veterans' issues will each meet on one of the two scheduled days. As details become available regarding content and timing of the meetings, the information will be posted at the SAIC website on the Internet: [http://leg.state.mt.us/interim\\_committees/](http://leg.state.mt.us/interim_committees/). Questions may be directed to Sheri Heffelfinger or Dave Bohyer at 444-3064 or by e-mail to



<sheffelfinger@state.mt.us> or <dboyer@state.mt.us>.

## LAW, JUSTICE, AND INDIAN AFFAIRS

To Meet in Helena...The Law, Justice, and Indian Affairs Committee (LJIAC) will hold its fourth meeting of the 1999-2000 interim on Thursday and Friday February 10 and 11 in Helena. The meeting is scheduled to begin at 9 a.m. both days in Room 487 of the Federal Building, 301 S. Park.

Thursday morning's agenda is dedicated to an exercise in which the Committee will revisit the Crime Seriousness Ranking produced by the 1995 Sentencing Commission.

Committee to Hear from Corrections...The Department of Corrections will address the LJIAC Thursday afternoon, providing information on Pre-sentence Investigations (PSIs) and giving a presentation on "Rethinking Probation and Parole". The Community Corrections Division is in the process of changing offender supervision policies to provide additional contact between offenders and officers outside of the traditional office setting. With new policies in place, officers will have increased contact with offenders in their homes, with their families, and in their places of employment. The Division is also looking at modifying officer work schedules to put officers in the community during evening and morning hours. Some officers will also have special sex offender and chemical dependency training.

At the Committee's November meeting, the Department offered to go through the inmate classification instrument and procedure for both men and women. This information will also be provided during the Committee's Thursday afternoon session and should be helpful as the LJIAC continues to work through fulfilling the requirements listed in HJR 37, the women's prison study resolution. Subsection (1) of HJR 37 requests that an appropriate interim committee be assigned to review the "classification system and the extent to which it takes into consideration the unique characteristics of women inmates and whether nonviolent inmates are treated at the appropriate levels of incarceration."

Update on HB 528...On Friday, Denise Juneau from the Office of Public Instruction will update the Committee on the status of Indian education and activities surrounding HB 528, the title of which reads: "An act implementing Article X, Section 1(2), of the Montana Constitution regarding the State of Montana's recognition of the distinct and unique cultural heritage of American Indians and the state's commitment to establish educational goals that will preserve the cultural integrity of American Indians."

Members will also follow up on the December 10 meeting and discuss Supreme Court Chief Justice Jean Turnage's proposal that the Committee consider requesting a bill to establish an intermediate court of appeals.

To Meet in April...Arrangements have been made with the Department of

Corrections for the Committee to tour Crossroads Correctional Center in Shelby on the second day of its April 13-14 meeting. On April 13, the Committee will meet on the Blackfeet Reservation. Hopefully, spring will have reached the Hi-line by mid-April!

For more information on the LJAC and meeting agendas, contact Leanne Kurtz at <lekurtz@state.mt.us> or at 444-3064.

## LEGISLATIVE SERVICES DIVISION

### LEGISLATIVE LIBRARY

The following legal memorandums are available from the Legislative Library:

"Legislative History of Major Workers' Compensation Legislation Affecting Benefit Levels and Claim Frequency" by Eddy McClure

"Background and Legal Analysis of Vocational-technical Education Funding in Montana" by Eddy McClure

"Separation of Powers Overview" by Greg Petesch  
(also available on the Internet at  
[http://leg.state.mt.us/Interim\\_Committees/LAW\\_JUSTICE/mainpage.htm](http://leg.state.mt.us/Interim_Committees/LAW_JUSTICE/mainpage.htm))

To obtain a copy of any of these memorandums, please call 444-3064 or e-mail a request to <efurbush@state.mt.us>.

## COUNTDOWN TO CENSUS 2000: APRIL 1, 2000

*The following information was borrowed from various press releases in the last month. You can also visit the Census Bureau at <http://www.census.gov> to learn more about Census 2000 and what you can do to ensure a successful census in which everyone in your community is counted.*

A recent analysis by POLIDATA, a demographic and political research firm outside of Washington, D.C., that projected out the population for the nine months from July 1, 1999 until April 1, 2000, reported:

"The fate of Montana still hangs in the balance, however. Based upon the 1999 estimates it would be the last seat assigned by the mathematical formula, the so-called 'method of equal proportions'. But the recent growth rates have been far less than they were in the early 1990s and a projection for 2000 by POLIDATA places Montana as only

about 5,000 persons below the last seat assigned. So, theoretically Montana could return to it's pre-1990 status of two seats. However, given the trends, this is still a large number of additional persons to find in Montana."

A rival Washington, D.C.-based consulting firm that specializes in redistricting, election administration, and the analysis of census and political data, Election Data Services, Inc., comes to the same conclusion in its analysis of estimates and resulting reapportionment but reports:

"...Montana's failure to regain it's second seat lost in 1990, however, is very tenuous. One of the four trend lines shows the state just missed the new seat by only 739 people, while the other trends indicate the margin to be only slightly larger. Three of the trend lines indicate Montana would be allotted seat number 436, just one seat away from the [total] number allocated for Congress under law."

This highlights that a complete count is vital for Montana and we truly cannot know our number of Congressional seats until this time next year. We can, however, assist the Census Bureau in taking a complete count and making sure that every Montanan is counted!

## THE BACK PAGE

### A TALE OF TWO CHRONICLERS

By Leanne Kurtz, Research Analyst  
Legislative Services Division

*Give the historians something to write about.  
-- Propertius*

### A VISIT TO THE PAST

Each election season and each session of the Montana Legislature adds another chapter to the captivating history of this state. The Capitol building is bursting at the seams with over a hundred years of stories of political intrigue, battles won and lost, and the more mundane day-to-day business of state government. Even as the domed structure undergoes extensive renovation, the ghosts of hundreds of legislators, lobbyists, and beleaguered staffers remain there, no doubt anticipating the final product as much as the rest of us. The legislator who fails to acknowledge the importance of the past to the process in which he or she is partaking is severely limited in the perspective necessary to make those critical decisions that legislators are called upon daily to render. For this reason alone, "a working knowledge of Montana history" should appear on every legislator's resume. Not to mention the fact that some of this stuff is more fun and more interesting than anything Hollywood could ever fabricate.

As one of the most significant political campaign seasons in the last 100 years heats up, it is fascinating to revisit Montana Territory's first political season in the fall of 1864. The story is one of hundreds of gems to be found cleverly told within the pages of *Montana: A History of Two Centuries*, penned by Michael Malone, Richard Roeder, and William Lang. Sidney Edgerton had already been appointed by President Lincoln as territorial governor and members of the territory's executive and judicial branches were all federal appointees. Those of a lone Congressional representative and members of the first territorial legislature were the campaigns waged before the Montana electorate.

"The Republicans ran their most prestigious party member, strong-willed Wilbur Fisk Sanders. Sanders enjoyed the advantages of his fame as a vigilante and the support of his uncle, Governor Edgerton. His Democratic adversary was Samuel McLean of Pennsylvania, a large, portly man who drank whiskey by the barrel. Backed by the only newspaper in the territory, the *Montana Post*, Sanders and Edgerton ran a tough, free-swinging campaign. They attacked all Democrats as

Copperheads and traitors and held themselves up as the only real guardians of the Union. There were only two political parties, Edgerton declared, "one for the Union and one against it." He put the issue squarely and passionately, but the strategy failed badly. In the election of October 24, 1864, Sanders lost to McLean, who carried the big Democratic counties of Madison and Jefferson. Otherwise, the Republicans held their own. The election produced a political balance in the legislature: The Council went Unionist (Republican) by one vote, and the House went Democratic, also by one vote."

## MONTANA'S LOSS

Early in the morning of December 21, 1999, the State of Montana suffered a profound loss not unlike that which it bore on December 24, 1995. Within four years of one another, almost to the day, two men, friends who had dedicated their lives to the study and analysis of Western history went the way of the legendary characters whose stories they told, leaving the rest of us with a vast library of compelling prose and proof that Henry Ford was wrong when he proclaimed history to be "more or less bunk." Rich Roeder and Mike Malone, now a part of Montana history themselves, saw to it that the remarkable true story of this state would be so much more than the musty tomes and dry lectures so many incorrectly associate with the study of the past.

*Montana: A History of Two Centuries* is widely recognized as the definitive history of Montana. Malone and Roeder also collaborated on *The Montana Past: An Anthology* and *Montana As It Was: 1876*. Through these works and dozens of articles and essays, the two have made it relatively easy for the attorneys, ranchers, teachers, businesspeople, retirees and others who make up our diverse citizen Legislature to access information on Montana's past, regardless of where they may fall on the political and educational spectrum. For this, and for their other significant contributions, the Montana Legislature and the citizens of Montana owe Malone and Roeder a debt of gratitude.

As president of Montana State University for nine years, Mike Malone was a fixture at the Capitol during legislative sessions, vying with various other Executive and Judicial Branch representatives for his institution's share of the limited dollars the Legislature is charged with divvying up every other year. By all accounts, Malone was a respected and likeable presence in the often tense and combative appropriations process. But he was a historian at heart. His obituary released by Montana State University speaks to Malone's remarkable "ability to combine administration with serious scholarship." After his appointment as university president, the memorial recounts, Malone "always maintained his other title, 'Professor of History', and joked with friends that it was his 'honest profession'."

Rich Roeder's contribution to the state and the people of Montana is not limited to the written word either. Roeder was a member of Montana State University's History faculty for 23 years and in 1972, helped shape the state's new charter as a member of the Constitutional Convention. As a member of the Convention's Legislative Committee, Roeder played a meaningful role in the drafting of the Executive and Education Articles of the new Constitution.

When the 2001 legislative session convenes and the biennial budget battle takes shape in the Appropriations and Finance and Claims Committees, members may suddenly and inexplicably feel compelled by some benign, yet passionate force to appropriate unprecedented amounts of money to Montana State University and to the Montana Historical Society. In the interest of the other agencies, of course, the Committee will resist the silent coaxing. They can rest assured, however, that Professors Malone and Roeder are merely trying to impart upon them the relevance of our past as they make the weighty decisions for our future.

### A LEGISLATIVE TRIBUTE

*The following resolution, signed by legislative leadership, will be transmitted by the end of January to the family of Michael Malone and to the Montana Historical Society archives.*

A RESOLUTION ON BEHALF OF THE SENATE AND THE HOUSE OF REPRESENTATIVES MEMORIALIZING THE LIFE OF DR. MICHAEL P. MALONE, LATE PRESIDENT OF MONTANA STATE UNIVERSITY-BOZEMAN, AND ENTERING INTO THE RECORD A TRIBUTE TO DR. MALONE'S LIFE AND CAREER.

WHEREAS, it is with profound sadness and regret that the members of the House of Representatives and the Senate of the 56th Legislature of the State of Montana note the passing of Dr. Michael P. Malone, President of Montana State University-Bozeman, on December 21, 1999; and

WHEREAS, it is fitting and proper that the record and accomplishments of the late Dr. Malone be filed on the official records of this Legislature and that the following tribute to his life and career be hereby noted.

The Montana Legislature is an institution steeped in the rich and colorful history of this great state, and few who have walked the halls of the Capitol during the Legislature's biennial sessions have appreciated the historical significance of the process in which they were taking part. Dr. Malone had such an appreciation.

Michael P. Malone was born the only son of John and Delores Malone on April 18, 1940, in southeastern Washington State. Twenty-seven years later, with a Doctor of Philosophy degree in American Studies from Washington State University

in hand, Dr. Malone began what would become a 32-year relationship with Montana and Montana State University. Rising through the ranks at Montana State from Assistant Professor of History in 1967 to head of the Department of History and Philosophy in 1976 to university President in 1991, Dr. Malone developed what now firmly stands as his legacy -- both a forward-thinking, dynamic administrator and a prolific Western historian.

The author of 9 books and numerous articles and the recipient of more than 20 awards and distinctions, Dr. Malone also led Montana State University for 9 years as the institution's president. He oversaw the construction of new engineering and agricultural sciences buildings and fostered the development of the Burns Telecommunications Center. Under Dr. Malone's watch, the university saw exceptional growth in its research enterprise.

While President Malone was escorting Montana State University into the 21st century with one hand, Professor Malone was exploring and interpreting the Montana and the West of the 19th and 20th centuries with the other. He managed to look to the future and the past at the same time, rendering the State of Montana and its people richer in opportunity and in knowledge.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That its members hereby express their high esteem and respect for the memory of Dr. Michael P. Malone and extend to his family their sincere sympathy for this loss.

BE IT FURTHER RESOLVED, that a copy of this memorial be entered into the record of the Senate and the House of Representatives of the State of Montana, that original copies of this document, signed by the Speaker of the House, the House Minority Leader, the President of the Senate, and the Senate Minority Leader, be transmitted to the surviving members of Dr. Malone's family, and that an original copy of this document be filed with the Montana Historical Society.

*History is the ship carrying living memories to the future.*

*-- Stephen Spender*



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL MEETINGS ARE HELD IN HELENA.

### FEBRUARY

February 10, Postsecondary Education Policy and Budget Subcommittee, Federal Building, Room B7

February 10-11, Law, Justice, and Indian Affairs Committee, Federal Building, Room 487, 9 a.m.

February 17, Transition Advisory Committee, Dept. of Environmental Quality, 1520 E. Sixth Avenue, Director's Conference Room, 9 a.m.

February 17, Revenue and Taxation Committee, Federal Building, Room B7, 10 a.m.

February 18, Revenue and Taxation Committee, Federal Building, Room B7, 8:30 a.m.

February 18, MEPA Subcommittee, Dept. of Environmental Quality, 1520 E. Sixth Avenue, Director's Conference Room

February 21, Presidents' Day, holiday

February 24, Eminent Domain Subcommittee, Dept. of Environmental Quality, 1520 E. Sixth Avenue, Director's Conference Room, 9 a.m.

February 25, Children, Families, Health, and Human Services Committee

February 28-29, State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee, Montana Association of Counties, 2715 Skyline Drive



**MARCH**

March 1, Workers' Compensation Subcommittee, Federal Building

March 2-3, Business, Labor, and Agriculture Committee, Federal Building,  
Room B7

March 8, Mental Health Managed Care Committee

March 23, Land Use/Environmental Trends Subcommittee, MSU-Billings, Billings

March 23, MEPA Subcommittee, MSU-Billings, Billings

March 24, Environmental Quality Council, MSU-Billings, Billings

March 30-31, State Administration, Public Employee Retirement Systems, and  
Veterans' Affairs Committee

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